



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 01 2016

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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Kirk Shermer  
President, Snowden Enterprises, Inc.  
PO Box 751  
Fresno, CA 93712

Re: Alleged Violations of the Federal Insecticide, Fungicide, and Rodenticide Act

Dear Mr. Shermer:

This letter is to notify you that the U.S. Environmental Protection Agency ("EPA" or the "Agency") is prepared to issue a civil administrative complaint against Snowden Enterprises, Inc. ("Snowden") pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l. The complaint will allege that Snowden has violated Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), by distributing and selling a misbranded pesticide, The Fruit Doctor, EPA Reg. No. 11195-1 ("The Fruit Doctor"). Specifically, The Fruit Doctor is "misbranded" as that term is defined by Section 2(q) of FIFRA, 7 U.S.C. § 136(q), because the main label does not have all required label text clearly legible and on a clear contrasting background that is not obscured, as required by 40 C.F.R. § 156.10(a)(2); the small cylinder label does not contain a first aid statement on the front panel of the label or a variant approved by EPA as required by 40 C.F.R. § 156.68(d); and the small cylinder label does not contain hazard and precautionary statements as required by 40 C.F.R. § 156.10(a)(1)(vii).

The placement of the Fruit Doctor logo and its coloring obscures statements (i.e., the first aid statements and precautionary statements) that are required to be on the label for a product registered under Section 3 of FIFRA. Pursuant to 40 C.F.R. § 156.10(a)(2)(i), "All words, statements, graphic representations, designs, or other information required on the labeling must be clearly legible to a person with normal vision, and must be placed with such conspicuousness (as compared with other words, statements, designs, or graphic matter on the labeling) and expressed in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use." All required label text must appear on a clear contrasting background. 40 C.F.R. § 156.10(a)(2)(ii)(B).

The complaint will seek a civil penalty for these violations. EPA has calculated a penalty using the FIFRA Enforcement Response Policy (ERP)<sup>1</sup>. Before filing the complaint, however, we are extending to you the opportunity to advise the Agency of any factors you believe the Agency should consider before issuing the civil complaint. Relevant factors may include any evidence of reliance on compliance assistance provided by EPA, misidentification of the proper party, or financial factors bearing on your ability to pay a civil penalty. Even if you are unaware of any mitigating or exculpatory factors, we are extending to you the opportunity to commence settlement discussions concerning the above-described

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<sup>1</sup> <http://www2.epa.gov/sites/production/files/documents/fifra-erp1209.pdf> Printed on 100% Postconsumer Recycled Paper. Process Chlorine Free.

violations.

In addition, please review the attached Small Business Regulatory Enforcement and Fairness Act ("SBREFA") Information Sheet that is designed to provide information on compliance assistance, as well as to inform small businesses of their rights to comment to the SBREFA Ombudsman concerning EPA enforcement activities. Be aware that SBREFA does not eliminate your responsibility to respond to a complaint, information request, or other enforcement activity within the allowed time nor does it create any new rights or defenses under the law.

If Snowden has any relevant information to bring to the Agency's attention prior to EPA's filing of a civil administrative penalty complaint, please provide it within thirty (30) calendar days after this letter is received. EPA intends to begin the process of filing a civil administrative complaint thirty calendar days after this letter is received unless you first advise us of substantial reasons not to proceed as planned.

Also, we are providing information about the EPA's Supplemental Environmental Project ("SEP") Policy in the event that you are interested in performing a SEP as part of a settlement in this case. A SEP is an environmentally beneficial project that a violator voluntarily agrees to perform, in addition to actions required to correct the violation(s), as part of an enforcement settlement. A SEP provides benefits that could not otherwise be obtained as injunctive relief or mitigation. In return, EPA agrees to reduce the monetary penalty that might otherwise apply as a result of the violation(s). SEPs must meet certain legal requirements. An overview of the requirements for a SEP, plus EPA's full SEP Policy, can be found at <http://www2.epa.gov/enforcement/supplemental-environmental-projects-seps>. Let us know if you would like us to send EPA's full SEP Policy or a brochure describing the SEP Policy.

EPA also encourages consideration of Next Generation compliance tools in all civil enforcement cases and incorporated in administrative settlements whenever appropriate. These tools include advanced monitoring, independent third party verification of a settling party's compliance with settlement obligations, electronic reporting and public accountability through increased transparency of compliance data. See "Use of Next Generation Compliance Tools in Civil Enforcement Settlements" Memorandum from Cynthia Giles, Assistant Administrator, dated January 7, 2015 ("Giles Memo"), available at <http://www2.epa.gov/compliance/next-generation-compliance-memorandum-next-gen-civil-enforcement-settlements>.

Thank you for your prompt attention to this situation. If you wish to discuss this matter or commence settlement negotiations, please contact Allison Watanabe, Enforcement Officer, at (213) 244-1807, or have your attorney contact Margaret Alkon, Assistant Regional Counsel, at (415) 972-3890.

Sincerely,



Roberto Rodriguez  
Manager, SDWA/FIFRA Section  
Enforcement Division

Enclosure

ecc: California Department of Pesticide Regulation



## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP and Oil Information Center

[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center

**Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791



### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### Toxic Substances Control Act (TSCA) Hotline

[tsc-hotline@epa.gov](mailto:tsc-hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*